IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17838 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SMT.KANCHANBENW/O.RAMESHBHAICHUNARA - Petitioner(s)
Versus
THESTATEOFGUJARAT & 2 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mrs. Hansa B. Punani, ld. Asst. Government Pleader for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 03/10/2005

ORAL JUDGMENT

1. The detenue, who is detained under the provisions of Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') branded as 'Bootlegger' within the meaning of section 2(b) of the PASA Act, vide order dated 09.08.2005 passed by the Police Commissioner, Ahmedabad City, has filed this petition under Article 226 of the Constitution of India to declare the order of detention as illegal, arbitrary and invalid on the ground that it suffers from non-application of mind and violative of provisions of Articles 14, 19, 21 and 22 of the Constitution of India.

2. The order of detention dated 09.08.2005 also contains the grounds for passing the said order and mainly reflects about the registration of crimes registered under the various offences punishable under Sections 66 (b), 65 (e) and 81 of the Bombay Prohibition Act at Prohibition

Station South Division, vide different crime register numbers. It also reflects the in-affectiveness of remedy under Section 93 of the Bombay Prohibition Act and also under Section 57(c) of the Bombay Police Act. In the last but one para the detaining authority has taken into consideration that for offence at Serial No.1 the detenue is already enlarged on bail and for offences at Serial Nos.2 and 3 the detenue is under judicial custody and further arrived at the subjective satisfaction that though the detenue is in judicial custody, in event of his preferring bail application, there is all likelihood that the detenue may be enlarged on bail and thereafter he may continue indulging into similar antisocial activities in future.

3. Learned advocate for the petitioner detenue, has challenged the order of detention dated 09.08.2005 mainly on the ground relying upon the decision in the case of **Amrutlal and other Vs. Union Government through Secretary, Ministry of Finance and others reported at AIR 2000 SC 3675**

about subjective satisfaction of the detaining authority detaining the detenue, even though such detenue is in judicial custody. The recital of usual phrases of detenue preferring bail application and grant of such application by the Competent Court of law and, thereafter again indulge into similar activities, must have foundation or basis in the backdrop of relevant materials. For arriving at a subjective satisfaction, as stated in Para-4 of the above judgment ipse dixit of the concerned officer about apprehension of detenue indulging in similar activities on enlargement of the bail is not sufficient, since preferring of bail application and releasing on bail both are different aspects. In the above circumstances, the learned advocate further submitted that the order of detention is required to be quashed and set aside. The learned advocate for the detenue has also submitted that alleged antisocial activities cannot be said to have bearing on the maintenance of the public order or the general health of the public and simply a crime is

registered, it cannot form a relevant material for arriving at the subjective satisfaction by the Detaining Authority that though the petitioner is a bootlegger, required to be detained under the provisions of the Act.

4. Mrs. Hansha B. Punani, learned Assistant Government Pleader for the respondent authorities has submitted that time and again the detenue has indulged into such offences and even witnesses have deposed that the detenue is a bootlegger and quite often indulged into such bootlegging activities. In the above circumstances, the satisfaction of the detaining authority that the detenue is a bootlegger is based on sufficient material and do not require any interference by this Court.

5. Having considered the rival submissions of the parties, I am likely to accept the submissions of learned advocate for the petitioner for the reasons that the detaining authority has failed to explain the aspect about relevant materials on

the basis of which the subjective satisfaction is reached, particularly for the fact about detenue being in judicial custody qua the offences at serial nos. 2 and 3 in respect of C.R.No.1380/05 and 1381/05 respectively registered against the detenue as narrated in the second part of the order of detention. That no materials exist for grant of Bail by the court and still to arrive at conclusion about release of the detenue on bail, indicates non application of mind on the part of the authority, vitiate subjective satisfaction and hence impugned order is illegal. Further, there must be cogent materials before the officer passing the detention order that the detenue is likely to be released on bail as per ratio laid down in the case of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others reported at AIR 2000 SC 3675.

The another decision has squarely covered the aspect reported at GLR 2003 (4) 2769 in the case of Usmangani Ismailbhai Minyana Vs. Commissioner of Police, Ahmedabad and ors. wherein it is stated in Para:5 that “From

the grounds of detention and the affidavit in reply, it is spelt out and noticed that the detaining authority has passed the detention orders at the time when the detenues were in judicial custody. It will be interesting to mention at this stage that the detaining authority, with regard to the factum of judicial custody of each detenue, has observed that there is likelihood of the detenue moving an application for bail in the Court of law, but this is assumed without attaining any satisfaction for reaching the conclusion for passing the detention order and even in absence of any cogent material. Nevertheless, it has been observed by the detaining authority in each case that though the detenue is in judicial custody while passing the detention order, he is likely to be released on bail. In the opinion of the Court, the excuse and the pretext that there is likelihood of presentation or submission of an application for being enlarged on bail by the detenue, ipse-facto, cannot constitute a subjective satisfaction for reaching the

conclusion that there is a fit case for passing the detention order. Insofar as the provisions of Section 3 of the PASA Act are concerned, there must be cogent material available with the officer passing the detention order to the effect that the detenue is likely to be enlarged on bail. Obviously, inference must be drawn from the available material on record and must not be ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is “likelihood to be released on bail” is different from “likelihood of his moving an application for bail”. The reasoning for likelihood of moving an application of bail by the detenue is obviously different from the likelihood to be enlarged on bail. Such a reasoning, in the opinion of the Court, cannot be said to be sufficient compliance of the requirements and safeguards as laid down under the PASA Act and various decisions of this Court as well as Hon'ble Supreme Court.“

6. In view of the law laid down by the Apex Court as relied upon by this Court in subsequent decision, the concerned officer is duty bound to arrive at the subjective satisfaction on the basis of relevant and cogent materials existing as on the date of passing the order of detention. Not only that the subjective satisfaction cannot be in the realm of imagination but to be based on relevant facts. As the apex court has observed that ipse dixit of the concerned officer cannot be formed a basis for subjective satisfaction of the authority. The above mentioned two judgments and the law laid down therein, have clearly applicability to the facts of the present case, and, therefore, exercise of powers by the detaining authority under the provisions of the Act is illegal and contrary to the provisions under Article 22 of the Constitution of India.

7. The order of detention dated 09.08.2005 passed by the respondent no.2, is quashed and set aside as there is total non-application of mind on the

part of the detaining authority before arriving at the subjective satisfaction.

8. The detenue Kanchanben w/o. Rameshbhai Kohyabhai Chunara is therefore ordered to be set at liberty forthwith, if not required in any other offence by any other authority.

9. Rule is made absolute to the aforesaid extent with no order as to costs. Direct Service is permitted.

(ANANT S. DAVE, J.)

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